Schedule 13 Change Request for FY 08-09 Budget Request Cycle Decision Item FY 08-09 Base Reduction Item FY 08-09 Supplemental FY 07-08 📝 Budget Request Amendment FY 08-09 Request Title: Real Estate Recovery Payments Department: DORA Dept. Approval by: Date: 02/07/08 **Priority Number:** 4 of 4 **OSPB Approval:** Date: 2 10 Total Decision/ Total Change Prior-Year Supplemental Revised Base Base November 1 Budget Revised from Base Actual Appropriation Request Request Request Reduction Request Amendment Request (Column 5) Fund FY 06-07 FY 07-08 FY 07-08 FY 07-08 FY 08-09 FY 08-09 FY 08-09 FY 08-09 FY 08-09 FY 09-10 Total of All Line Items Total 17,277 0 50,000 50,000 0 FTE 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 GF 0 2,653 2,653 0 **GFE** 0 0 0 CF 17,277 0 CFE 47,347 47,347 0 E E (8) Division of Real Estate Real Estate Recovery Total 17,277 0 50,000 50,000 Payments FTE 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 GF 0 2,653 2,653 0 GFE 0 0 0 0 0 CF 17,277 0 0 0 0 CFE 0 47,347 47,347 0 0 0 0 FF Letternote revised text: This amount shall be from reserves in the Real Estate Cash Fund that constituted the Real Estate Recovery Fund until its repeal via HB05-1264 Cash Fund name/number, Federal Fund Grant name: Division of Real Estate Cash Fund #212 IT Request: T Yes V Request Affects Other Departments: Tyes V No If Yes, List Other Departments Here:

CHANGE REQUEST for FY 08-09 BUDGET REQUEST CYCLE

Department:	Department of Regulatory Agencies	
Priority Number:	4 of 4	
Change Request Title:	Real Estate Recovery Payments	

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SELECT ONE (click on box): Decision Item FY 08-09 Base Reduction Item FY 08-09 Supplemental Request FY 07-08 Budget Request Amendment FY 08-09	SELECT ONE (click on box): Supplemental or Budget Request Amendment Criterion: Not a Supplemental or Budget Request Amendment An emergency A technical error which has a substantial effect on the operation of the program New data resulting in substantial changes in funding needs Unforeseen contingency such as a significant workload change
Short Summary of Request:	The Department requests \$50,000 including \$2,653 General Fund and \$47,347 Cash Funds Exempt to make statutorily required payments for Real Estate Recovery.
Background and Appropriation History:	Prior to HB 05-1264, the Department managed the Real Estate Recovery Fund, which served as a trust fund that supported payments made to parties who received court judgments against real estate professionals who harmed them. The General Assembly repealed this fund in the 2005 Session. In order to provide for the payment of claims against the fund pending at the time of the repeal – which were dependent on the outcome of civil proceedings and could not be known and would take years to resolve – the bill did the following:
	 Established a deadline for the filing of claims; Transferred remaining fund balance to the existing Real Estate Cash Fund; Mandated that payments of pending claims be made from the Real Estate Cash Fund up to a maximum of the amount of transferred fund balance;

- Required that further claim payments be made from the General Fund, if necessary;
- Stipulated that administrative order of the Real Estate Commission was sufficient authority for a warrant to be drawn by the State Controller and payment to be made from the fund by the State Treasurer.

Given that the General Assembly could not know the exact fiscal impact of required payouts and that for this reason payments from the fund had always been continuously appropriated, it was expected that the bill's requirements would be sufficient to allow the spending to occur if and when it was necessary.

Historical Background. The General Assembly established the Real Estate Recovery Fund (fund) in 1973 to provide compensation for willful wrongdoing in real estate transactions. In the late 1970's, the General Assembly added negligence claims as compensable from the fund. In 1996, the General Assembly removed negligence claims as compensable from the fund because it made mandatory Errors and Omission insurance (E&O). Prior to its repeal in 2005, the fund paid for willful wrongdoing and limited instances of negligence where the broker does not have E&O insurance. In order to collect from the fund, the claimant was required to: 1) Provide notice of a potential claim against the fund within 90 days after filing a civil suit, 2) have obtained a civil court judgment in the claimant's favor, and 3) demonstrate an inability to collect from other sources. Once a claimant met these three requirements, he or she could file a claim against the fund.

Payments from the fund were limited to a maximum of \$50,000 per real estate transaction and a maximum of \$150,000 against any single broker. The primary revenue source for the fund was interest earnings, along with a surcharge (up to \$40) on license renewal fees, administrative fines collected by the division; license reinstatement fees; and transfers from General Fund. Prior to its repeal, the fund balance primarily accumulated via years without claims and interest earnings.

General Description of Request:

The Department requests \$50,000 General Fund in support of the statutory obligation to make payments for Real Estate Recovery. This obligation was created by an administrative order of the Commission RF 2007-003, dated December 12, 2007, pursuant to the following statutory provisions:

<u>12-61-303. Simplified procedure - application for administrative order for payment from the fund - repeal.</u>

- (8) (a) If the commission determines that an application is complete and valid, the commission may, by administrative order:
- (I) Pay the requested amount or such lesser amount as the commission may deem appropriate; 12-61-308. Distribution from fund fund insufficient to pay claims delayed distribution authorized.
- (1) Upon the issuance by the commission of an administrative order directing that payment be made out of the fund, or upon the entry of such an order by a court of competent jurisdiction, the controller is authorized to draw a warrant for the payment of the same upon a voucher approved by the real estate commission, and the state treasurer is authorized to pay the same out of the fund.

12-61-302. Limitation on payments out of the real estate cash fund - repeal.

- (1) No payment shall be made from the general fund pursuant to this part 3 unless:
- (a) The applicant has notified the commission, in writing, of the commencement of a civil action for a judgment that may result in an application for recovery from the fund. Such written notice shall be given no later than ninety days after commencement of the civil action.
- (b) The revenues, if any, transferred to the division of real estate cash fund pursuant to subsection (11) of this section have first been exhausted. As used in this part 3, "fund" shall mean in the first instance such revenues transferred pursuant to subsection (11) of this section and then, if such revenues have been exhausted, the general fund.

While it was expected that this language was sufficient to facilitate the payment, no appropriation exists for this purpose. Therefore, the Department requests a supplemental appropriation so that payment can be made immediately.

The request has become necessary for two reasons – first, the existence, timing, and amount of the award could not be foreseen. Second, it similarly could not be foreseen that this language would be insufficient to obtain spending authority for a payment obligated by statute.

Consequences if Not Funded:

If the request is not funded, the payment obligated by state law will not occur, and it is likely that the claimant will have grounds to sue the State to obtain the payment. Further, delays in payment are statutorily subject to 4% interest beginning 30 days from the Administrative Order.

Calculations for Request:

Summary of Request FY 07-08	Total Funds	General	Cash Funds	Cash Funds	Federal	FTE
		Fund		Exempt	Funds	
Total Request	\$50,000	\$2,653	\$0	\$47,347	\$0	0.0
Real Estate Recovery Payments	\$50,000	\$2,653	\$0	\$47,347	\$0	0.0

Summary of Request FY 08-09	Total Funds	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
Total Request	\$0	\$0	\$0	\$0	\$0	0.0

Assumptions for Calculations:

The amount of the request is identified in the Administrative Order as the total payment. However, the required funding split is dependent on the statutory provisions that require the transferred balance to be exhausted first, and subsequently for General Fund to be required. Based on the following figures, this need calculates to \$47,347 Cash Funds, and \$2,653 General Fund:

Ending Balance transferred from Real Estate Recovery Cash Fund	457,066
Claims paid to date from transferred balance	(409,719)
Remaining Balance	47,347
Pending Claim	(50,000)
Remaining Balance	(2,653)
Supplemental Request to Pay Claim	50,000
Cash Funds (amount to exhaust transferred balance)	47,347
General Fund (amount beyond transferred balance)	2,653

Any future claim will require 100% General Fund, although it is uncertain when or whether future claims will occur.

Impact on Other Government Agencies:

None.

Cost Benefit Analysis:

N/A.

Implementation Schedule:

Task	Month/Year
Pay claim pursuant to Administrative Order	03/08

Statutory and Federal Authority:

Section 12-61-303, CRS (2007). Simplified procedure - application for administrative order for payment from the fund - repeal.

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- (I) Pay the requested amount or such lesser amount as the commission may deem appropriate; Section 12-61-308, CRS (2007). Distribution from fund - fund insufficient to pay claims - delayed distribution authorized.
- (1) Upon the issuance by the commission of an administrative order directing that payment be made out of the fund, or upon the entry of such an order by a court of competent jurisdiction, the controller is authorized to draw a warrant for the payment of the same upon a voucher approved by the real estate commission, and the state treasurer is authorized to pay the same out of the fund.

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Performance Measures:

N/A.